Appendix D

EMC^2

The Enterprise Storage Company

EMC CORPORATION
SOFTWARE LICENSE AGREEMENT

This Software License Agreement ("Agreement"), is between EMC Corporation, identified herein as "EMC", and "Customer". In accordance with Contract Section 7, Software License Agreement, EMC and the Customer hereby agree to the following terms and conditions:

1. DEFINITIONS

Acceptance: Acceptance for Software shall occur upon receipt of such Software by Customer.

Appendix E: Terms and Conditions for Continuous Coverage Product Maintenance attached as Appendix E to the Contract.

Application Software: means EMC Software that runs on a non-EMC platform as identified on a Quote issued by EMC or purchase order issued by Customer, and is not licensed for use in connection with any Designated EMC System.

Continuous Coverage Product Maintenance: maintenance services identified as such in Appendix E.

Core Software: EMC microcode and firmware that enable a Designated EMC System to perform its basic storage functions. Core Software does not include any Enterprise Storage Software.

Designated EMC System: The storage system owned by Customer at the Designated Site identified by the serial number set forth on the storage system cabinet.

Designated Outsource Vendor- Vendor contracted by the State of Texas, acting by and through the Department of Information Resources to perform outsourcing services to Customers under contract DIR-SDD-495.

Designated Site: Customer's facility where the Host CPU or Designated EMC System is located.

Enterprise Storage Software: Software separately identified by EMC other than Core Software and Maintenance Aids. Enterprise Storage Software consists of:

    I. Host-based Software: Software that is licensed for use on one or more Host CPUs, as designated by EMC.

    II. Symmetrix-based Software: Software that is licensed for use on the Designated EMC System and, if applicable, one or more Host CPUs, as designated by EMC.

Host CPU: A central processing unit designated by Customer for operation with the Designated EMC System.

Maintenance Aids: Hardware, software and other aids used by EMC in furnishing Maintenance Services.

Software: Core Software, Enterprise Storage Software, Application Software and any other software licensed by EMC to Customer. Software includes Software Releases and does not include Maintenance Aids.

Software Release: any new version of a specific Software Product provided by EMC under Continuous Coverage Product Maintenance or during the period in which the Software is covered by the applicable warranty.

2. SOFTWARE LICENSE

(1). EMC grants to Customer a non-exclusive, non-transferable (except to another Customer or to the Designated Outsource Vendor upon request of Customer) license to use the Enterprise Storage Software and Core Software solely in conjunction with the Designated EMC System or Host CPU, as applicable, for which the Software was licensed, provided Customer pays all applicable one-time and annual usage fees in accordance with the provisions of this Agreement. EMC grants to Customer a non-exclusive, non-transferable (except to another Customer) license to use the Application Software for the number of applicable licensing units (e.g. seats, CPUs, servers, copies or page limitations) set forth in the product description in the Quote or purchase order, provided Customer pays all applicable one-time and annual usage fees in accordance with the provisions of this Agreement.

(2). Customer shall not, without EMC's prior written consent, provide, disclose or otherwise make available Software in any form to any person other than Customer's employees, independent contractors or consultants, who shall use the Software solely for Customer's internal business purposes in a manner consistent with this Agreement. Customer shall be fully responsible to EMC for the actions of its employees, independent contractors and consultants.

(3). Customer may make one copy of the Software for back-up and archival purposes for use only in the case of a malfunction of Software, Designated EMC System or Host CPU, as applicable.

(4). Customer may change the location of a Designated EMC System
upon which the Enterprise Storage and Core Software is used to a replacement location, subject to decertification and recertification by EMC. If Customer moves the Enterprise Storage Software to another Designated EMC System which has a different model number than the originally Designated EMC System, Customer agrees to pay, if applicable, an upgrade fee based on EMC's then-current price and upgrade policy and, at the next support anniversary date, agrees to pay applicable fees based upon the replacement model number.

(5). EMC may grant Customer a license to use Software in conjunction with a Statement of Work (a "Project License"), Customer shall have a non-transferable right to use the Software only for the purpose of conducting a specific project under such Statement of Work. The Project License term shall be for one (1) year or the completion of the project, whichever occurs first.

(6). Customer shall not use the Software on any device other than the Designated EMC System or Host CPU, as applicable, except that the Enterprise Storage Software may be temporarily transferred to a replacement Designated EMC System or Host CPU, as applicable (and deleted from the original Designated EMC System or Host CPU) if the Designated EMC System or Host CPU is inoperable due to malfunction or initiation of a disaster recovery program or if the Designated EMC System or Host CPU is otherwise not able to use the Enterprise Storage Software.

(7). Ownership: No title to, or ownership of, the Software is transferred to Customer, and any references to "sale" or "purchase", with respect to the Software, shall be deemed to mean "license on the terms contained in this Agreement." Customer shall reproduce and include EMC's copyright and other proprietary notices on and in any copies, including but not limited to partial, physical or electronic copies of the Software. Neither Customer nor any of its agents, independent contractors or consultants shall modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce the Software to human readable form without EMC's prior written consent. If Customer requires access to the source code of the Software in order to achieve interoperability of the Software with other software in the European Union or Norway, Customer shall provide EMC with written notice. EMC can then decide either: (i) to perform the work in order to achieve such interoperability and charge EMC's then-current rates for such work to Customer; or (ii) to permit Customer to reverse engineer parts of the Software in order to obtain such source code, but only to the extent necessary to achieve such interoperability. Customer shall promptly report to EMC any violation of this clause and shall take such further steps as may be reasonably requested by EMC to remedy any such violation and to prevent future violations.

(8). Secondary Purchaser: Customer's right to use the Software may not be assigned, sublicensed or otherwise transferred. However, if Customer sells or transfers the Designated EMC System, EMC shall offer to license the Core Software to any bona fide end user (hereinafter "Secondary Purchaser") to whom Customer has transferred the Designated EMC System. Licensing of the Core Software to a Secondary Purchaser is subject to the provisions of Appendix D, Sub-section 3.6, Transfer of Equipment to Secondary Purchasers. To the extent the Core Software is subsequently licensed by EMC to a Secondary Purchaser, Customer's license to use such Core Software shall be deemed terminated.

3. WARRANTY

(1). Warranty for Software

(a). EMC warrants that the Core Software shall be free from material defects in materials and workmanship and that the Core Software shall perform substantially in accordance with EMC's written specifications for such Core Software for two (2) years from Acceptance, under normal use and regular recommended service.

(b). EMC warrants that the Enterprise Storage Software shall, under normal use, perform substantially in accordance with EMC's written specifications for such Enterprise Storage Software. The warranty period for Enterprise Storage Software shall be for a period of ninety (90) days from Acceptance. EMC warrants that the Application Software shall, under normal use, perform substantially in accordance with EMC's written specifications for such Enterprise Storage Software. The warranty period for Application Software shall be for a period of ninety (90) days from Acceptance.

(c). EMC's entire liability and Customer's exclusive remedy under the above two warranties described in the two preceding paragraphs shall be for EMC to use reasonable efforts to remedy material defects covered by these warranties within a reasonable period of time or, at EMC's option, either to replace the non-conforming Software with functionally equivalent or superior Software or to refund the amount paid by Customer for such Software, as depreciated on a straight line basis over a five (5) year period upon return of such Software to EMC. EMC does not warrant that the operation of the Software will be uninterrupted or error free, or that all Software defects can be corrected. Customer shall return the replaced Software to EMC upon EMC's request.

(2). The warranties described above do not include efforts to remedy, repair or replace as a result of: (i) accident or neglect; (ii) problems relating to or residing in other hardware, software or services with which the Software is used; (iii) installation of the Software not in accordance with EMC's instructions or specifications; (iv) use of the Software in an environment, in a manner or for a purpose for which it was not designed; and (v) installation, modification, alteration or repair of the Equipment or the Software by anyone other than EMC or its authorized representatives.

(3). Disclaimer of Warranties: EXCEPT AS EXPRESSLY STATED IN THIS WARRANTY SECTION, EMC MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, BY OPERATION OF LAW OR OTHERWISE, OF ANY SOFTWARE FURNISHED UNDER OR IN CONNECTION WITH THIS AGREEMENT. EMC DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR

PURPOSE, TITLE, OR NON-INFRINGEMENT AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

(4). Maintenance services set forth in Appendix D shall be provided at no additional cost during the respective warranty periods for the Core Software and the licensed Enterprise Storage Software. Maintenance services set forth in Appendix D for the Application Software commence upon delivery of such Application Software.

4. TERMINATION

EMC shall have the right to terminate without liability any of Customer's licenses to the Software granted pursuant to this Agreement (i) if Customer fails to comply with the terms and conditions of this Agreement and then fails to cure such failure within thirty (30) days after receiving written notice thereof from EMC, or (ii) if Customer fails to pay any applicable one-time or annual usage fees. Upon notice of termination, Customer shall immediately cease to use all copies of the Software in which the licenses have been terminated, and shall return or destroy, and certify destruction of, the Software and all portions and copies thereof, subject to compliance with applicable record retention laws.